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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/403,072	01/19/2000	RONNY KNEPPLE	3143-P0082A	6808

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EXAMINER
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LEE, DIANE I

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/403,072

Applicant(s)

KNEPPLE ET AL.

Examiner

D. I. Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2,5-9,11,14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,5-9,11,14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

1. Receipt is acknowledged of the Amendment filed 12 November 2003. Claims 2, 5, 7-9, 11, and 14-15 have been amended; claims 10 and 13 have been canceled; and claims 16-26 have been newly added. Currently, claims 2, 5-9, 11, and 14-26 are pending in this application.

### *Claim Rejections - 35 USC § 112*

2. **Claims 2, 5-9, 11, and 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**Re claim 14:** The phrase "the sample container being usable for holding the sample within the container at an operating temperature higher than a room temperature" in claim 14 is a relative term which renders the claim indefinite. Applicant has failed to clearly define the room temperature and the operating temperature. The room temperature of the container includes a wide range of temperatures, which depends on the sample contained in the container (i.e., room temperature could be a temperature of an office, a storage warehouse, a refrigerator, or a freezer). The operating temperature also depends on the type of the contents filled in the container, e.g., alcohol, cosmetics, foods, etc., or surfactant, organic solvents, oils, etc. where certain contents are require to filled at a higher temperature then others. Thus, without defining the type of the sample substance and/or the type of the placement that defines the room temperature, claims is vague and indefinite. Accordingly, claim 14 and claims depend therefrom, claims 2, 5-9, 11, and 15 are vague and indefinite.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. **Claims 2, 11, and 14-15 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Fergusson [US 4,004,904] view of what was well know in the art, as exemplified by Quadracci et al. [US 5,347,726-referred as Quadracci].**

**Re claims 14-15:** Fergusson teaches a method of manufacturing a container (glass bottle) and labeling the container, to provide identification to the container, after the containers have been formed, comprising the steps of:

Producing a sample container in a heated environment (generally, the glass articles, such as bottles or containers are formed by a glass forming machine 5 to produce glass articles 6 in heated environment) (see col. 2, lines 46+ and figure 1);

cooling the heated sample container (the process of moving the container, while the container is quite hot from the glass forming machine, to a common dead plate 7, onto conveying belts 8, 10 and to a lehr belt 12);

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wherein the temperature of the container is at most high at the glass forming stage, i.e., at the glass forming machine 5 where the production of the sample container is operated and the temperature is at a maximum temperature,

applying a marking agent to a surface of the container while cooling the container, which (identifying the bottle at the identification area 26 where the containers are marked with a marker 84, e.g., marking the container by ink, see col. 3, lines 8+; col. 4, lines 18+; and figures 1-2);

the fact that marking stage (i.e., applying the marking agent to a surface of the container) takes place a predetermined time later after the glass forming stage, the temperature would be decreased during the transition period of the containers traveling from the glass forming stage to the marking stage);

Although Fergusson teaches that applying the marking agent to a surface of the container at a temperature below from the maximum temperature; Fergusson does not disclose the specific the temperature of the marking stage, i.e., applying the marking agent at a temperature such that volatile constituents of the marking agent are evaporated during the manufacturing process of the sample container to prevent contamination of the sample to be received within the sample container and usable at the operating temperature.

Note: The applicant has define the operating temperature as a temperature that the container receiving the sample, and wherein the operating temperature is higher than a room temperature.

The examiner takes Official Notice that during the manufacturing process of glass ware, drying a marking agent, such as an ink, by a drying means causes to evaporate various solvents and gases from the ink that causes majority of the air contamination is well-known to one of ordinary skill in the art, as evidenced by the Quadracci (see col. 1, lines 59+, for example).

The fact that the sequence of the manufacturing process of Fergusson includes a glass forming stage (discussed above), marking stage (discussed above), and identification/inspection stage for determining and separating the defective bottles from the acceptable ware before outputting the container

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as an acceptable ware to be utilized thereafter; thus, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to recognized that the volatile constituents of the marking agent are evaporated during the marking stage of the manufacturing process of the container to prevent any contamination of the sample before outputting the container as an acceptable ware to be utilized thereafter and usable at the operating temperature (i.e., after the identification/inspection stage of the manufacturing process of Fergusson). Accordingly, the container determined as an acceptable ware of Fergusson would be safe and gas-free to be process thereafter.

The recitation “the container being usable for holding the sample within the container at an operating temperature higher than a room temperature” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of the container, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

**Re claims 2 and 11:** Although Fergusson is silent with respect to specifics interval of the temperature, which the marking agent is applied, i.e., between 300°C and 600°C.

However, the interval of the temperature varies on the molding temperature of the container, which depends on the type of the material being used and the specific strength characteristic and the formation of the bottle being manufactured, thus, it would have been an obvious variation to an artisan of ordinary skill in the art at the time the invention was made to vary the temperature interval to provide specific desire strength of the container and the formation of the container. Accordingly, it would have been an obvious extension taught by Fergusson.

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6. **Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fergusson in view of Baldwin [US 5,5510,610].** The teachings of Fergusson have been discussed above.

**Re claims 5-6 and 9:** Fergusson does not disclose the formation of marking, such as a bar code symbol or a bar code applied annually onto a cylindrical portion of the container.

Baldwin discloses marking a bottle having a formation of a bar code symbol and/or a bar code applied annually onto the lower part of the cylindrical portion of the container (see figures 4-6), and more.

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the specific marking formations in the teaching of Fergusson in order to optically read the identification data.

**Re claim 7:** Fergusson as modified by Baldwin does not disclose the formation of marking

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the numerals or letters in the optical identification process of Fergusson as modified by Baldwin to expand the identification labeling technique. Furthermore, applying the identification with numerals or letters in an optical reading process (incorporating optical character reading in the bar code reading) would have been an obvious extension taught by Fergusson as modified by Baldwin for the purpose of providing additional information. Accordingly, it would have been an obvious expedient.

**Re claim 8:** Fergusson as modified by Baldwin does not disclose the identification is applied in form of numerals or letters.

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to substitute the bar code reading process of Fergusson as modified by Baldwin with an optical reading process by providing the identification code in form of numerals or letters in order to eliminate the computing process in the decoder. Accordingly, it would have been an obvious expedient.

### *Response to Arguments*

7. Applicant's arguments filed on 2/19/04 have been fully considered but they are not persuasive.

8. Applicant argued on page 6-7 that the applicant's sample container being usable for holding the sample within the container at an operating temperature higher than a room temperature, the claimed invention can ultimately prevent contamination of the sample to be received therein and used at the operating temperature, and that Ferguson bears nothing to labeling a sample container for identification of a sample to be received therein. Although Ferguson teaches the applying identification for purpose of determining the defective of the container, Ferguson does not explicitly states the identification of the sample, which identifies the sample to received. However, the difference is intended use of the identification. Thus, the manner in which the claimed identification (i.e., identification of the sample or identification of the sample to be received therein) is an obvious intended used of the known identification, which does not differentiate from the prior art.

9. In response to applicant's argument that Ferguson is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Ferguson clearly teaches the process of manufacturing the container that includes the production of the container and applying the identification of the container for process thereafter.

10. Applicant argued on page 9 that Ferguson fails to teach the steps of: cooling the heated sample container is to a temperature interval between a maximum temperature and the operating temperature. The examiner respectfully disagrees. In the claim, applicant has define the operating temperature as a temperature that the container receiving the sample, and wherein the operating temperature is higher than



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a room temperature. First, the fact that the room temperature of the container includes a wide range of temperatures, which depends on the sample contained in the container (i.e., room temperature could be a temperature of an office, a storage warehouse, a refrigerator, or a freezer) and the range of the operating temperature also depend on the type of the contents filled in the container, e.g., alcohol, cosmetics, foods, etc., or surfactant, organic solvents, oils, etc. where certain contents require to filled at a higher temperature than others, thus, the claim is vague and indefinite since applicant has not clearly defining the type of the sample substance and/or the type of the placement of the sampled container. Second, the fact that the sequence of the manufacturing process of Fergusson includes a glass forming stage, marking stage, and identification/inspection stage for determining and separating the defective bottles from the acceptable ware before outputting the container as an acceptable ware to be utilized thereafter; thus, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to recognized that the volatile constituents of the marking agent would be evaporated during the marking stage prior to the inspection/identification stage of the manufacturing process to prevent any contamination of the sample before outputting the container as an acceptable ware to be utilized thereafter and usable at the operating temperature (i.e., after the identification/inspection stage of the manufacturing process of Fergusson). Thus, the containers that determined as an acceptable ware of Fergusson would be safe and gas-free to be process thereafter. Accordingly, Fergusson teaches the step of cooling the heated sample container at a temperature interval between a maximum temperature and the operating/room temperature.

11. Applicant argued on page 10 that Quadracci is directed to a web manufacturing process for improving the quality of printed color-image thereon, and does not disclose or teach anything related to the sample container as in the claimed invention. The examiner respectfully disagrees. The examiner relied on Quadracci reference for the well-known teaching of the drying a marking agent, such as an ink, by a drying means causes to evaporate various solvents and gases from the ink, causes the air

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contamination. Thus, the containers that determined as an acceptable ware of Fergusson would be safe and gas-free to be process thereafter. Accordingly, the volatile constituents of the marking agent would be evaporated during the marking stage prior to the output stage of the container as an acceptable ware.

### *Conclusion*

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

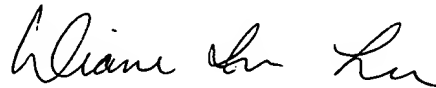
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. I. Lee whose telephone number is (571) 272-2399. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. I. Lee  
Primary Examiner  
Art Unit 2876

D. L.